

between its monopoly and competitive services SCB has, Radiofone submits, violated federal antitrust laws as well as this Commission's policies. It is incumbent upon the Commission to fully consider the effects of such violations on SCB's character qualifications before the captioned applications can be granted. See Docket No. 9572, Violation by Applicants of Laws of U.S., 42 F.C.C.2d 399 (1951), made applicable to the Domestic Public Land Mobile Radio Service in Page Boy, Inc., 8 R.R. 1108 (1954), aff'd sub nom. Klein v. FCC, 232 F.2d 73 (D.C. Cir. 1956). There the Commission noted that "in determining whether a particular applicant should be permitted to operate so important and restricted a facility as a radio station . . . it is appropriate that the Commission examine pertinent aspects of the past history of the applicant." 42 F.C.C.2d at 400, quoting Mansfield Journal Co. v. FCC. 180 F.2d 28, 33 (D.C. Cir. 1950). Nor does it matter that SCB has never been found guilty of the law violations Radiofone now alleges. First, the facts forming the basis of these allegations have only recently come to light. Second, and more importantly, the Commission has recognized that "even though no suit alleging illegal conduct has been filed . . . the Commission may consider and evaluate the conduct of an applicant in so far as it may relate to matters entrusted to the Commission." Docket No. 9572, 42 F.C.C.2d at 403.

The Commission has consistently recognized its authority, and its duty, to consider fully alleged anticompetitive rate practices by a wireline telephone company in the context of an application proceeding for radio facilities. United Telephone Company of Ohio, 26 F.C.C.2d at 418-421; Bonduel Telephone Company, 68 F.C.C.2d at 502-503. "Where, as here, radio services are provided to the public by common carriers on a competitive basis, the Commission has authority to the extent of its jurisdiction under Title III of the Communications Act . . . to ensure that the competition between the carriers is fair." Morrison Radio Relay Corp., 31 F.C.C.2d 612, 616 (1971), citing Radio Relay Corp. v. FCC, 409 F.2d 322 (2d Cir. 1969).

10. Rates and practices with respect to mobile telephone services are generally left to the jurisdiction of the various states in which the carriers operate. But this fact does not preclude an inquiry into the alleged anticompetitive rate practices of SCB. As the Commission held in United Telephone Company of Ohio:

By scrutinizing in a hearing [allegations of anticompetitive rate practices] we are in no sense impinging on the regulatory ambit of a state commission; our concern is not with the level of rates; our concern is that there may be unfair or illegal competitive practices existing between wireline and nonwireline carriers in the use of radio facilities which are federally licensed.

26 F.C.C.2d at 419.

11. The matters heretofore raised in this motion relate to SCB's rate practices with respect to its manual, mobile telephone services. The documents attached hereto as Exhibits A through F make it clear that those rates were noncompensatory and that the manual, mobile services were being subsidized by SCB's general telephone revenues. Radiofone submits that an enlargement of the issues to include an inquiry into these practices is clearly justified. It is further submitted, however, that the presiding judge should now also consider including issues with respect to SCB's proposed IMTS rates for New Orleans and Houma. It is clear that SCB has engaged in anticompetitive practices with respect to its manual rates, and the Commission should fully consider whether SCB will do the same with respect to its IMTS rates. The Commission, in originally-designating this proceeding, declined to add an issue on SCB's proposed IMTS rates. The Commission held that Radiofone had not presented the requisite quantum of factual showing to justify the issue. Radiofone submits that the issue is now warranted, however, in light of the clear and convincing evidence of SCB's unlawful practices with respect to its manual rates. There is no reason why SCB cannot do with regard to its IMTS what it did with regard to its manual services.

Similarly, there is no reason why SCB cannot do now or in the future that which it intentionally has done in the past. Perhaps the most compelling reason for now considering SCB's proposed IMTS rates is that, as discussed in paragraph 8, above, SCB decided to convert to IMTS, at least partly, as a means of covering up its unlawful practices with respect to its manual rates. At the very least the Commission should have the benefit of the presiding judge's full consideration of the matter based on a complete record.

12. A final matter--that of the burdens of proof and proceeding--requires attention. Whether alleging or actually litigating matters such as these, radio common carriers face a procedural barrier. They may be fully convinced that certain rates are anticompetitively low but be unable to legally prove the allegation because they lack the factual information necessary to do so. The Commission has recognized that this is because the relevant information is "peculiarly within the knowledge of the applicant." United Telephone Company of Ohio, 26 F.C.C.2d at 421. Accordingly, in designating issues such as the ones Radiofone now requests, the Commission has seen fit to place the burden of proceeding with the introduction of evidence and the burden of proof on the applicant rather than the protestant. Id. at 421; Bonduel Telephone Company, 68 F.C.C.2d at 503. Radiofone

requests that the allocation of burdens be handled similarly in this proceeding.

13. For all of the foregoing reasons, Radiofone moves the presiding judge to enlarge the issues of the captioned proceeding to include the following:

- (a) to determine whether SCB has charged in the past, or is presently charging, rates for manual mobile telephone service in Louisiana which are noncompensatory;
- (b) to determine whether SCB has cross-subsidized in the past, or is presently cross-subsidizing, between its competitive mobile services and its monopoly wireline services;
- (c) to determine whether SCB's proposed IMTS rates are noncompensatory and would result in cross-subsidization;
- (d) to determine whether, in light of the evidence adduced under the foregoing issues, SCB has engaged, or is engaging, in unlawful or anticompetitive activities; and
- (e) to determine whether, in light of the evidence adduced under the foregoing issues, SCB possesses the requisite character qualifications to remain a Commission licensee.

Radiofone further requests that the burden of proceeding with the introduction of evidence and the burden of proof

- 15 -

as to these issues be placed on SCB.

WHEREFORE, it is requested that the instant motion be granted.

Respectfully submitted,

RADIOFONE, INC.

By


Arthur Blooston


Robert J. Keller
Its Attorneys

Blooston and Mordkofsky
2120 L Street, Northwest
Washington, D.C. 20037
202-659-0830

Dated: 4 March 1980

000034


South Central Bell Telephone Company

1215 Prytania Street
New Orleans, Louisiana 70140
Telephone 504 525-6665

Murray C. Fincher
Vice President

October 20, 1969.

Approved 1-16-70

Mr. W. R. Bunn
Vice President - Operations
Birmingham, Alabama

Dear Mr. Bunn:

Existing facilities for providing Mobile Telephone Service in New Orleans consist of four VHF manual radio channels. Our current forecast indicates that by 1971 a fifth channel will be needed. Rather than add another manual channel, we propose to replace the entire manual system with a five channel VHF Improved Mobile Telephone System.

By converting to IMTS, we expect to accomplish two objectives. First, we hope to satisfy increasing demands for better mobile service. Our customers are continually complaining of slow service, overloaded channels, and antiquated service. The 16.7 in moves to gain one station we are currently suffering is a clear indication of their dissatisfaction.

Second, we believe we can turn our New Orleans mobile service into a profitable venture. For quite some time now, New Orleans mobile service has been operating in the red. Increased mobile telephone operating costs of the late 1960's have far outstripped Louisiana's 1946 mobile telephone rates. An attempt to secure a rate increase on our present less-than-desirable mobile service would certainly meet with considerable opposition. On the other hand, if we promised to improve the service by installing IMTS, our chances for securing this much-needed rate increase would be substantially greater.

Further, in anticipation of IMTS Louisiana has replaced through normal attrition a little more than 90% of its manual type radio sets with the IMTS type. By 1971, all manual sets will have been replaced and hence, we expect no increase, as a result of IMTS, in our station apparatus replacement expenditures.

000030

Although we urgently need to reverse our mobile telephone losses in Louisiana, we would not want to jeopardize our pending request for a general rate increase with an ill-timed request for increased mobile telephone rates. We will postpone therefore, until after the general rate question is settled, any request for increased mobile telephone rates.

Your approval of New Orleans IMTS is requested now though, so that when the general rate question is settled, we may immediately request of the Louisiana Public Service Commission an IMTS rate sufficient to achieve an adequate return on proposed total investment in IMTS. If and when this rate is granted, we will spend approximately \$180,000 to install IMTS in New Orleans.

Yours truly,

B. A. Cunningham
Vice President

Recommended for Approval:

J. L. Smith 1-5-1970
Assistant Vice President -
Commercial and Rates

J. L. Smith 12/1/1969
Traffic Staff Operations Manager

C. R. H. Smith 12/8/1969
Traffic Staff Operations Manager

W. W. Bennett 12/3/1969
Assistant Vice President -
Marketing

R. W. Smith 1-2-1970
Planning Director

E. H. Lane 1-12-1970
Engineering Director

J. H. Lane 1969
General Manager -
Planning and Engineering

APPROVED:

M. B. Smith 1-16-1970
Vice President - Operations

During the early months of our current rate case, consideration was given to applying a small increase to mobile telephone service. The monthly increase of \$1.00 per set would have had an annual revenue effect of \$8,436.

In the summer of 1969, this proposal was removed from the list of items being considered. At the time it was felt that our mobile service was so substandard that any rate increase would not be justified. Also, the total revenue effect would be too small to justify the customer ill will that might result. Therefore, the idea was scrapped, but unfortunately for the wrong reason.

Any increase in mobile rates should be substantially more than \$1.00 per month. The total annual revenue increase should be at least \$75,000. The reasons for this lie in the present status of our mobile service and why it has deteriorated so.

Mobile service was first introduced in Louisiana in 1946 when the New Orleans LFB was \$8.00 and the Baton Rouge LFB was \$5.25. In that year the present rate structure for mobile service was established: \$22.00 for the first channel (including a \$7.00 minimum charge for messages) and \$3.00 for additional channels. Although the service was initially established in New Orleans, additional exchanges began offering the service when customer demand became sufficient. Attachment A shows the exchanges where the service is offered; the cost of the first and additional channels; the date the service was introduced; the LFB rate at that time; the present LFB, and the LFB rate proposed in our current rate case.

In 1946, the rate for the first channel was equivalent to approximately 3 New Orleans business lines. With the rate case pricing, the two rates would be almost equal. The inequities are equally apparent in Baton Rouge where the 1946 LFB rate was \$5.25 versus the proposed 1970 rate of \$16.95. Obviously, we have been increasing basic exchange rates to keep pace with inflation, increasing operating costs, interest rates, etc. However, we have been overlooking these same factors in other services, such as mobile telephone.

Neglecting to increase mobile rates has shown up in our profits too. In April of 1969, a study was made to compare the profitability of manual mobile service and that of I.M.T.S. Using the forecasted mobile development in Baton Rouge for 1971, it was estimated that the rate of return for manual mobile service would be minus 5.7%, but "only" minus 0.3% for I.M.T.S.

Rates charged by our competition - the Radio Common Carriers - also indicate that we are underpricing mobile telephone service. Assuming a subscriber has one channel, maintenance, and only the minimum message charge, the R.C.C. rates throughout Louisiana range from \$32.50 to \$45.00. The R.C.C.'s also generally charge more for transistorized sets and excess messages, and their message allowances are usually less than ours.

@ Summer 1970
WCC

How does our service compare to that of the R.C.C.'s? Some have said that since the R.C.C.'s mobile service is an outgrowth of their telephone answering service, the R.C.C. mobile operator gives more personalized service and performs answering service duties for the customer. However, the R.C.C. customer is probably paying extra for that service. That is, he is likely to also be a subscriber to the answering service under a separate contract. The most meaningful comparison of the two services is probably use of available channels.

We have a total of 23 channels working in the 12 exchanges where message rate mobile service is offered. Using a busy hour per cent usage of 65% as an indication of overload, 14 channels in 10 cities have been overloaded on an average of the past five quarters ending March 31, 1970. (See Attachment B) Unsolicited comments made by customers disconnecting our mobile service in Baton Rouge indicate that the busy channel problem is the greatest single reason for disconnecting. There were very few complaints about the price level.

The busy channel complaints, while justified throughout the state, are particularly reasonable in Baton Rouge. In the first quarter of 1970, some 150 subscribers had to share two channels. It has been estimated that each of the R.C.C.'s located in Baton Rouge has only 60 to 70 subscribers sharing two channels.

Business seems to be booming for the Baton Rouge R.C.C.'s even though their rates are \$45.00 per month as opposed to our \$22.00 rate. Both have requested third channels. Why the market for mobile customers, willing to pay a \$23.00 monthly "differential" to an R.C.C., is growing is obvious. Mobile customers are not poor, and they are all willing to pay extra to receive adequate service. To keep their "line fills" low for adequate service, the R.C.C.'s are adding new channels to meet their demand. With their rates, new channels mean more opportunities to make more money. When we add additional channels it is an opportunity to lose more money faster.

We need to raise our rates for three reasons. First, because we are losing money. Non-mobile subscribers are being forced to subsidize a class of user for whom subsidization is completely unjustifiable. Secondly, it will improve the service by eliminating marginal users and those who might just want prestige for \$22.00 a month. Thirdly, it will reduce problems if and when the Company converts to I.M.T.S. Cost studies indicate I.M.T.S. rates would be so much higher than the present manual mobile ones that it might be impossible to introduce I.M.T.S.

The first problem in raising the mobile rates is deciding what type schedule to use. The rates should be lower than those of the local R.C.C., but since R.C.C.'s are not committed to a statewide schedule, their rates vary from city to city. A \$35.00 rate in Baton Rouge would be competitive and profitable, but it would not be competitive in Jennings where the local R.C.C. has a monthly rate of \$32.50 for the first channel.

A city-by-city rate would be unworkable because of the large number of "roamers" in the state. They could take Jennings service because of the low rate, and then use the service primarily in New Orleans, Baton Rouge and Shreveport which have the same channel (YJ).

To reconcile these two problems, the following rate changes are proposed. Increase the charge for the first channel to \$31.00 (including the \$7.00 minimum message charge) and the charge for additional channels to \$4.00. This structure would keep our rates competitive in the small, one channel exchanges where the R.C.C.'s have lower rates. In the larger, multi-channel exchanges where customers usually take an additional channel to increase the "odds" of getting an idle channel, the increase would be even larger, but still below the R.C.C. rates.

The increase would be even greater for the "roamers" who have three, four and five channels. Greater charges to "roamers" is justifiable because of the additional handling of their message tickets and because of the temporary overloads they can create in one- and two-channel exchanges.

On paper, this rate structure would produce an annual increase of \$98,604 on March 1969 development and \$93,624 on February 1970 development. However, this increase would probably not be realized because of customers disconnecting part or all of their mobile service. However, it is improbable that enough would disconnect to reduce our total revenues, and those remaining would have improved service because of reduced loads. Moreover, the reduced expense might make mobile profitable.

The biggest obstacle to increasing the rates, of course, is the Louisiana Public Service Commission. They are reluctant to approve any increase. Any effort to "swap out" a mobile increase with a rate decrease for another service might require furnishing cost studies, which could prove embarrassing. If we are to increase mobile rates, the only appropriate time in the foreseeable future would be during our current rate case. Including a mobile increase in the final settlement could avoid disclosure of the rate of return for the service and would reduce the need for increases in other services that are already profitable.

<u>EXCHANGE</u>	<u>1st CHANNEL*</u>	<u>ADD'L CHANNEL**</u>	<u>DATE</u>	<u>1FB AT THAT TIME</u>	<u>PRESENT 1FB</u>	<u>PROPOSED 1FB</u>
New Orleans	22.00	3.00	11/25/46	8.00	17.50	20.30
Lake Charles	22.00	3.00	1/1/51	7.75	12.00	13.40
Morgan City	22.00	3.00	1/1/51	5.25	9.00	12.15
Port Sulphur	22.00	3.00	1/1/51	6.50	8.00	9.80
Shreveport	22.00	3.00	4/3/53	13.50	15.00	16.10
ath (Abbeville)	22.00	3.00	3/26/54	7.50	9.00	10.90
Franklin	22.00	3.00	3/26/54	7.50	9.00	10.90
Houma	22.00	3.00	3/26/54	7.50	9.00	12.15
Lafayette	22.00	3.00	3/26/54	9.00	10.50	13.40
Baton Rouge	22.00	3.00	6/24/54	12.00	13.50	16.95
Monroe	FR		1/10/63	12.00	12.00	13.40
Alexandria	FR		6/12/63	12.00	12.00	13.40
Buras	22.00	3.00	11/12/63	8.00	8.00	9.80

* Includes \$7.00 minimum billing for messages. Messages after the first 120 are billed at \$.05 each.

** Messages on additional channels are "lumped" together with the first channel to determine charges for any excess messages.

Per Cent Busy Hour Usage

CITY	CHANNEL	1969				1970	Average	Composite
		1	2	3	4	1		
Baton Rouge	YP	90	80	80	71	62	77	79
	YJ	90	71	92	70	82	81	
Bossier	YP	94	94	68	33	38	65	65
Erath	JK	73	47	26	41	11	40	57
	JP	88	79	70	67	68	74	
Franklin	YJ	91	97	71	58	26	69	69
Houma	JS	81	77	53	59	63	67	61
	YR	63	58	44	56	51	54	
Jennings	YJ	17	3	3	4	48	15	15
Lafayette	JS	60	52	54	59	50	55	63
	JL	55	68	53	59	64	60	
	YR	56	61	76	94	87	75	
Lake Charles	JL	63	79	82	83	83	78	79
	JP	84	85	80	82	87	84	
	YR	78	83	71	70	78	76	
Morgan City	JL	86	93	78	73	43	75	75
New Orleans	JL	69	77	53	57	75	66	64
	JR	51	53	57	53	58	54	
	YJ	88	88	72	73	62	77	
	YS	NA	45	59	58	66	57	
Port Sulphur	JP	41	55	23	63	12	39	39
Shreveport	JL	67	65	68	75	75	70	67
	YJ	56	55	64	66	74	63	

RATE COMPARISONS

EXCHANGE	CHANNELS		BELL RATE*		M. C. C. RATE		PROP. BELL RATE	
	BELL	MCC	1st CHAN	2 CHANS	1st CHAN	2 CHANS	1st CHAN	2 CHANS
Baton Rouge	2	2	22.00	25.00	45.00	8	31.00	35.00
	-	2	-	-	45.00	8	-	-
Burac	1	2	22.00	25.00	38.00	44.00 *	31.00	35.00
Jennings	1	1	22.00	25.00	32.50	40.00 *	31.00	35.00
Lafayette	3	4	22.00	25.00	35.00	8	31.00	35.00
Morgan City	1	1	22.00	25.00	35.00	8	31.00	35.00
New Orleans	4	3	22.00	25.00	38.00	44.00 *	31.00	35.00
		3	22.00	25.00	38.00	44.00 *	31.00	35.00
Shreveport	2	1	22.00	25.00	25.00	8	31.00	35.00
	-	2	-	-	37.50 (FR)	8	-	-

Rates assume rental of mobile unit, maintenance and initial message allowance.

* Half of this increment is for the additional channel itself. The other half is for the "black box" that allows channel selection.

8 Not readily identified in the tariff of the M.C.C.

New Orleans, Louisiana
July 9, 1971

MEMORANDUM TO:

Mr. D. E. Buck
Chief Engineer
New Orleans, Louisiana

The statements in Mr. Gann's letter are correct, although I cannot vouch for the numbers used in the cost studies.

The "quality of our present service" referred to by Mr. Greene is unsatisfactory primarily because of overloading of the existing channels at New Orleans and Baton Rouge. The attached usage report indicates that additional channels are needed now at New Orleans, Baton Rouge, and Erath. A third channel at Baton Rouge was recommended by the Mobile Services Committee in March, 1970, but failed to obtain executive approval. The project was not economically justifiable at the present rates. Since no improvement in rates has been obtained or is anticipated in the near future, the Committee has not recommended any other channel additions, feeling that they would also not be approved.

Copies of Mr. Bunn's letter of June 12, 1970, and our reply are attached. Fulfillment of the program outlined was clearly indicated to be contingent upon favorable rate treatment and availability of funds.

Project approval has been obtained for conversion to IMTS at New Orleans, but money has not been programmed. It would not appear to be a good investment unless appropriate rates can be established.

000043

In summary, we seem to be at an impasse, unwilling to spend money to improve an unprofitable service, and unable to obtain a profitable rate structure for a service that needs improving.

My recommendation would be that we propose to the Public Service Commission a compensatory rate structure for IMTS, and a schedule for provision of that service should the rates be granted.

J. R. Wilson
State Transmission and
Protection Engineer

LOUISIANA

PLANNING

Requir. nents

pub
7/8

New Orleans, Louisiana
July 6, 1971 MPG:jcb

MEMORANDUM TO:

Mr. D. E. Buck
Chief Engineer
New Orleans, Louisiana

Mr. J. A. Griffith
Assistant Vice President
New Orleans, Louisiana

Mr. G. D. Henderson
General Staff Manager
New Orleans, Louisiana

The attached letter gives strong support for the need for DMTS in Louisiana.

The quality of our present service makes increasing charges on the manual service impractical, yet we are "losing our shirts" on it every year we leave it in at present rate levels.

I have requested Mr. Marcum to make this information available to the Mobile Service Committee for consideration and recommendation.


General Staff Manager

cc: Planning Manager/JLM

000045

LOUISIANA

PLANNING

Mr. Is Service Revenue
Requirements

New Orleans, Louisiana
July 20, 1971

Mr. E. J. Fleming
District Sales Manager
New Orleans, Louisiana

Rm. 424

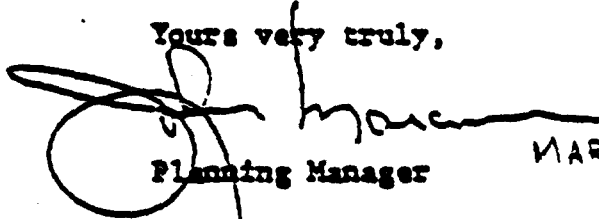
Dear Mr. Fleming:

The attached letter gives strong support for the need for LMTS in Louisiana. The quality of our present service makes increasing charges on the manual service impractical, yet we are losing money on it every year we leave it in at present rate levels.

Also attached is a letter from Mr. J. R. Wilson to the Chief Engineer, concerning his views on Mr. Gann's letter.

I am making this information available to you and the Mobile Service Committee for consideration and recommendations.

Yours very truly,


Planning Manager

MARCUM

JLM:bg

Attachments

Received-Area 444
JUL 21 1971

000046

LOUISIANA

PLANNING

Mobil. Service Revenue
Requirements

New Orleans, Louisiana
July 15, 1971 MPG:jcb

PERSONAL & PRIVATE
MEMORANDUM TO:

Mr. D. E. Buck
Chief Engineer
New Orleans, Louisiana

Copy to: Mr. J. A. Griffith
Assistant Vice President
New Orleans, Louisiana

In Mr. Wilson's letter regarding improvement in mobile service, he refers to our reluctance to convert to IMTS because of mobile rates.

Jim Griffith and I have discussed this matter many times, and we feel that higher rates would be difficult to justify with our present manual service. However, this is not intended to imply that rates for improved (IMTS) service could not be set at acceptable levels.

I think that we should reconsider our priorities on funds in light of potential profits on IMTS and current losses on manual service. We also are getting pressure through the Commission and from the R.C.C.'s in the state to investigate our rates, and this might be embarrassing if it is brought out that the general subscriber body is subsidizing mobile.


General Staff Manager

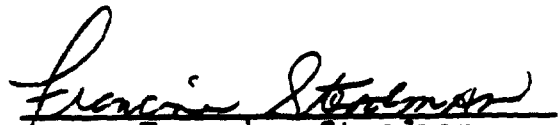
CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Law Offices of Blooston and Mordkofsky and that on the 4th day of March, 1980, I mailed by first class, United States mail, a copy of the foregoing MOTION TO ENLARGE ISSUES to the following:

The Honorable James F. Tierney */
Administrative Law Judge
Federal Communications Commission
Washington, D.C. 20054

Thomas W. Moore, Esquire
South Central Bell Telephone Company
600 North 19th Street
Post Office Box 771
Birmingham, Alabama

James O. Juntilla, Chief
Hearing Division
Common Carrier Bureau
Federal Communications Commission
2555 M Street, Northwest
Suite 101
Washington, D.C. 20554


Francine Steadman

*/Hand delivered

Before the
Federal Communications Commission
Washington, D. C. 20554

In re Applications of

20903

SOUTH CENTRAL BELL
TELEPHONE COMPANY

CC Docket No. 79-150
File No. 11870-02-79-1-15

For construction permit
for modification of DPMVS
station KMD-34 at Eureka,
Louisiana, to replace
equipment, add channels,
and to furnish improved
Mobile Telephone Service

SOUTH CENTRAL BELL
TELEPHONE COMPANY

CC Docket No. 79-151
File No. 11871-02-79-1-15

For construction permit
for modification of DPMVS
station KMD292 at New
Orleans, Louisiana, to add
channels and to furnish
improved Mobile Telephone
Service

MEMORANDUM OF DECISION AND ORDER

Issued: March 27, 1980

; Released: March 11, 1980

By Administrative Law Judge James T. Marney:

1. At hand is a Motion filed, March 4, 1980, by Radiofone, Inc. (Radiofone) seeking to enlarge issues against applicant, South Central Bell Telephone Company (SCB). On March 17, 1980, the Common Carrier Bureau (Bureau) filed a response, essentially in support; SCB filed an Opposition on the same date. A Reply by Radiofone was filed on March 20, 1980.

2. Predicated on premises (if that word can yet be indulged) on information and data elicited from SCB by Radiofone in its Discovery period Radiofone urges the need for the enlargement of issues as set to comprehend the following:

- (a) to determine whether SCB has charged in the past, or is presently charging, rates for regular mobile telephone service in Louisiana which are uncompetitive;

- (b) to determine whether SCS has cross-subsidized in the past, or is presently cross-subsidizing, between its competitive mobile services and its monopoly wireline services;
- (c) to determine whether SCS's proposed RMS rates are noncompensatory and would result in cross-subsidization;
- (d) to determine whether, in light of the evidence adduced under the foregoing issues, SCS has engaged, or is engaging, in unlawful or anticompetitive activities; and
- (e) to determine whether, in light of the evidence adduced under the foregoing issues, SCS possesses the requisite character qualifications to remain a Commission licensee.

3. In support of its urgings, Radiofone notes that the pertinent Rule addressed to its instant Motion provides that "[m]otions for modification of issues which are based on . . . newly discovered facts shall be filed within 15 days after such facts are discovered by the moving party, 47 CFR 1.229(b)." Radiofone emphasizes that the "facts" upon which its Motion is based were not discovered by it "until February 25, 1980," the source of which being responses to interrogatories served on SCS and which derive "solely in SCS internal documents." Hence, Radiofone suggests timely filing. Should that not be sufficient, Radiofone further notes that the aforesaid Rule comprehends possible untimely filing ". . . if . . . initial examination of the motion demonstrates that it raises a question of probable decisional significance and such substantial public interest importance as to warrant consideration in spite of its untimely filing, 47 CFR 1.229(c)." Radiofone states the proposition well and its Motion is considered timely filed on either count; for no one can be heard to doubt "the decisional significance" or "the public interest importance" of Radiofone's newly arrived allegations.

4. "Given the allegations set forth in [its] motion — allegations based entirely on admissions by SCS" says Radiofone, a full hearing on its proposed additional issues is a stare sue non, citing United Telephone Company of Ohio, 35 FCC 2d 417 (1970). Consolidated Telephone Company, 68 FCC 2d 497 (1973) and other. (Emphasis added.) Only in passing — "admissions"? Discoverable information in the possession of one's opponent, albeit relevant, is it also of the level of admissions of fact? Not likely; even though properly discovered, it may be otherwise explained, refined, rejected, even possibly adopted or other. Of course, this may occur at some later moment, but not at pre-trial, which is

principally devoted to preparation for the occasion of admissible matter, i.e., an trial. (See 47 CFR 1.164; 47 CFR 1.311 - 1.325.) Thus, we begin our quest to disposition with allegedly relevant facts discovered.

5. Radiofone becomes the principal thesis for expansion of the issues on documents attached in Exhibits to its Motion, documents, in the main, from the records of SCB. They disclose, says Radiofone, "(a) SCB was charging in 1971, and for several years previously, mobile telephone rates that were noncompensatory; (b) SCB was using revenues from its general telephone service (as to which it enjoyed a monopoly) to subsidize its Louisiana mobile telephone service (as to which it competed with radio common carriers); and (c) the reason for SCB's decision to convert to MMS was that it could then achieve a rate increase without providing a cost study for its manual service — a study which would have disclosed its noncompensatory rates and unlawful cross-subsidization."

6. In its Opposition SCB, referring to the beginnings of this "application proceeding of mere epic proportions" — more than five years — greatly disparages Radiofone's principal thesis saying, "Radiofone supplies no new facts in support of its Motion, rather Radiofone has merely submitted additional documents, containing warped-over facts which Radiofone, the Commission and the Louisiana Public Service Commission (PSC) have known for over five years, i.e., (1) SCB's mobile telephone service in Louisiana was outdated and inadequate to meet the public's needs, (2) the rates for that service were low and had been for some time, and (3) SCB proposed to replace that inadequate mobile service with Improved Mobile Telephone Service (MMS) at increased rates."

7. Radiofone in its Reply responds that "the facts Radiofone presented in its Motion were neither known to Radiofone earlier nor presented to the Commission previously. . . . It is true that Radiofone previously alleged that SCB's manual rates were too low and requested an issue with respect to SCB's proposed MMS rates. But the particular facts now relied on by Radiofone were never before presented to the Commission; nor could they have been because until February 25, 1980, the incriminatory documents were in the sole possession of SCB." (Reply, p. 4 — Emphasis in original.)

8. In its argument in refutation of SCB's claim that its Motion fails to raise facts of decisional significance, Radiofone in its Reply again cites "the two controlling authorities" "ignore[d] in SCB's Opposition" — United Telephone and Bonded Telephone, supra. Further rejecting SCB's characterization of its "attempt 'to reify intrastate rate issues before this Commission,'" Radiofone concedes that "[t]he Louisiana PSC has jurisdiction to consider whether SCB's proposed rates for its intrastate services are just and reasonable — i.e., at what level

the rate should be set. Radiofone does not contend otherwise. Nor does it ask [this] Commission to involve itself in the question of interstate rates except insofar as this Commission's radio licensing authority is concerned." (Reply at p. 7 - Emphasis in original.) Radiofone continues suggesting that perhaps in deference to the states, the Commission adopted "stringent standards" for a prima facie showing before entertaining an anticompetitive practice issue; but when that standard is met, "the Commission does entertain such issues" (Ibid., emphasis added.) Citing United Telephone, supra, at 419.

9. Up to this point, has Radiofone measured up to the admittedly "stringent standards" reflected in the otherwise clearly apposite "controlling authorities," United Telephone and Bondual? In United, the Petitioner to Deny proffered cost factors, cost analysis and computations in support of its charges of violation of the anti-trust laws and the Communications Act, while the renewal applicant United "merely content[ed] itself with procedural arguments and with a one sentence denial of the accuracy of [Petitioner's] cost estimates" (United at 413-415). Also, in Bondual, an affidavit containing an analysis of the loans expected to go into Bondual rate base from an officer of Petitioner for Reconsideration gave fairly precise cost information and data in support of allegations of anticompetitive rates. Particularly, there the Commission observed "because Bondual did not respond to the questions raised in the . . . affidavit, we are reversing the Bureau on its finding with respect to alleged anticompetitive rates and are including an issue concerning anticompetitive rates in this order." (Bondual at p. 303.)

10. These conditions — standards, if we will — do not appear here. "In the instant case, Radiofone's listing of rates — which it charges are anticompetitively low — is unsupported by any cost analysis. Radiofone contends that the SCB rates for manual services have been noncompensatory for years. Similarly, Radiofone alleges that the SCB DMS rates in Baton Rouge are not compensatory. In neither of these two complaints does Radiofone submit any cost factors to support its conclusion that the rates are noncompensatory. Finally, Radiofone challenges the DMS rates which SCB proposes in New Orleans. Again, the complaint lists only rates and does not furnish any cost factors involved to support Radiofone's conclusion that the rates are noncompensatory. At this juncture, Radiofone has failed to allege sufficient data as required by United Telephone of Ohio . . . to present a prima facie case [showing] may be the more accurate term as to matter prior to actual litigation, of anticompetitive rates" (Designation Order at para. 12).

11. In footnoting a reference to the Radiofone Petition to Deny of October 30, 1974, the Commission also observed, "While we recognize that most of the information required to support such charges is largely in the possession of SCB, we nevertheless require something more from a

petitioner than unsupported accusations. Even employing the liberal standard established United Telephone of Ohio . . . the petitioner's showing is insufficient." (Id. - Emphasis added.) Here SCB has opposed at every turn, in depth and detail, Radiofone's legal journey from the beginnings in 1974 to this moment. (See, for example, exhibits attached to SCB's Opposition.)

12. Having said all this respecting the "standards" of United and Bonded in analogy with the circumstances here, what remains, if anything, further to distinguish the case at bar with those precedents? There is, of course, those matters so pointedly emphasized in Radiofone's Motion, e.g., Exhibit 7, the SCB letter of 1971 that is "might be embarrassing if it is brought out that the general subscriber body is subsidizing mobile" (Emphasis in original); Exhibit 8, SCB's personnel saying "furnishing cost studies which could prove embarrassing"; "getting pressure through the Commission and from the RCOs in the state to investigate our rates" (Exhibit 7); a rate increase suggests Radiofone "would require making public cost studies which would uncover the unfair non-compensatory rates and the anti-competitive cross-subsidization." (Motion at p. 9.)

13. SCB demands the suggested import or thrust of these revelations saying "[t]he expressions of concern of some SCB employees in Louisiana at the time of these letters and memoranda that raising the annual rates might prove 'embarrassing' or somehow 'jeopardize' pending general rate increases demonstrate that their reaction was not directed at the competing radio carriers. Maintaining the status quo was not anti-competitive in either intent or effect. Rather, it simply made the competitors' higher-priced service even more attractive to those customers willing and able to pay for it." (Opposition at p. 5.) Radiofone labels the latter statement "absurd" and "ridiculous."

14. As earlier noted, these disclosures in Discovery may not reach the plateau of "admissions"; they do, however, reveal highly relevant hypotheses to certain of the proposed additional issues. For example, ~~the~~ the disclosure of the state of mind, if not the state of fact, of the author of it "might be embarrassing if it is brought out that the general subscriber body is subsidizing mobile" certainly prompts the notion, at least hypothetically, that cross-subsidization was or is taking place; thus fortifying the further notion of the appearance of a prima facie showing intentionally subsumed under a permissible fancy into the proposed issues. This condition rises far above "unsupported accusations." Radiofone's Motion and Reply, to the extent

1/ As Radiofone has remarked, the SCB personnel involved (called "employee" by SCB) were hardly of the level of lower echelon employees; indeed, says Radiofone even a Vice-President was a principal actor.